

(2000) 03 MAD CK 0042

In the Madras High Court

Case No : W.P.No. 5788 of 1993 and W.M.P.No. 9321 of 1993

K. Radhakrishnan

APPELLANT

Vs

The Additional Registrar (Marketing, Planning and Development), Office of the Registrar of Co-operative Societies, Kilpauk, Madras-10 and another

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 152, 153, 75
Tamil Nadu Co-operative Societies Rules, 1988 — Rule 169

Citation : (2000) 2 CTC 147 : (2000) 2 MLJ 7

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. S. Ayyathurai, for the Appellant; Mr. S. Gopinathan, Government Advocate and Mr. M. Liagat Ali, for the Respondent

Judgement

P. Sathasivam, J.—The short question to be decided in this writ petition is whether first respondent-Additional Registrar of Co-operative

Societies is correct in dismissing the revision filed by the petitioner against the rejection of the order of the 2nd respondent on the ground that it is

not maintainable u/s 153 of the Tamil Nadu Co-operative Societies Act since the said order is not an order under the Act/ Rules or Bye-laws of

the second respondent Union.

2. The brief facts leading to the filing of the writ petition are stated hereunder:-

The petitioner joined the service of the second respondent on 20.11.1974 as a Care-taker. On 12.6.1978, the second respondent appointed him

as a clerk on the basis of a letter of the Registrar dated 5.6.78 in the time scale of pay. While in employment, he underwent Co-operative

Supervisor training course in 1978-79 and the results were announced in

February, 1980. Though he passed in February, 1980, he was appointed as Junior Assistant (Clerical cadre) only with effect from 1.1.1981. In the meantime one A. Rathinam was appointed as Attender in October, 1976. The second respondent appointed the said Rathinam in the post of Junior Assistant which was sanctioned by the Registrar in relation to the petitioner on the basis of the appointment as Junior Assistants, the respondent placed him (petitioner) below the said Rathinam in the list of seniority. Since the seniority list published by the 2nd respondent is not legal and justified, he filed objections to the list of seniority. The second respondent, by an order dated 19.8.92, rejected his objections and claim for seniority over and above the said Rathinam. Therefore, he filed a revision petition against the first respondent against the order of the second respondent dismissing his petition. By the impugned order dated 28.12.92, the first respondent dismissed the petition filed by the petitioner holding that his revision petition is not maintainable, hence he has filed the present writ petition.

3. The first respondent has not chosen to file counter affidavit.
4. The 2nd respondent-Special Officer has filed a counter affidavit highlighting their defence and the merits of the claim of the petitioner.
5. Heard the learned counsel for the petitioner as well as respondents.
6. There is no dispute that the second respondent published a seniority list and called for objection, if any from the persons working under him, on or before 10.5.92. According to the petitioner, he was wrongly placed below one Rathinam. He made a representation to the second respondent.

The second respondent in his proceedings dated 19.8.92 informed the petitioner that there is no need to alter the position in the seniority list and rejected the request of the petitioner, against which he preferred a revision petition u/s 153 (1) of the Tamil Nadu cooperative Societies Act. 1983 and Rule 169 of the Tamil Nadu Cooperative Societies Rules, 1988 (hereinafter referred to as ""the Act"" and ""the Rules"" respectively). By the impugned order, the first respondent has passed the following order:-

Under Section .153 of the Tamil Nadu Co-operative Societies Act, 1983, a revision shall lie only in respect of any proceedings under the Act or the Rules or the by laws. The impugned order is not an order under the Act, Rules or the by laws of the Union. The revision petition is not

therefore maintainable. Hence it is not entertained.

The said order is being questioned in this writ petition. According to Mr. S. Ayyathurai, learned counsel for the petitioner, since the 2nd

respondent has prepared and published a seniority list on the basis the by laws of the second respondent Union, since the petitioner being

aggrieved by the seniority list, the second respondent did not consider his objection, the only remedy open to him is to file a revision u/s 153 of the

Act before the first respondent. In order to appreciate the said contention, it is useful to refer the relevant provision, namely. Section 153 of the

Act which runs as follows:-

153. Revision,- (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of

the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government

may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the

rules or the by-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 to satisfy

himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or Order made

therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or

remitted for reconsideration, he or they may pass orders accordingly. Provided that every application to the Registrar or the Government for the

exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which

the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations .

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by

such party to the application for revision as the Registrar or the Government may deem fit.

The reading of the said provision makes it clear that it is open to the Registrar either on his own motion or on application from any aggrieved

person to call for and examine the record of any officer subordinate to him or any officer of a registered society and examine in respect of any

proceedings under the Act or the Rules or the By-laws as to the regularity of such proceedings or correctness, legality or propriety of any decision

passed or made therein. It is clear that wide power, has been entrusted with the Registrar as well as the Government in respect of any order or

decision made by any subordinate Officer or Officer of any Society registered under sub-Section (3) of Section 75 of the Act in respect of any

proceedings under the Act or the Rules or the By-laws. Only exception mentioned therein is that in respect of matters in which an appeal is

provided to the Tribunal as per sub-section (1) of Section 152 in all other matters, the Registrar or the Government is empowered and authorised

to consider and pass orders. Proviso (i) to sub-section (1) enables of Section 152 the Registrar or the Government to consider and exercise the

powers under the said Section if any application is made within 90 days on the date on which the proceedings, decision or order to which the

application relates was communicated to the applicant concerned. As per sub-section (2) of section 153 no order prejudicial to any person shall

be passed under sub-section (1) unless such person has been given an opportunity of making his representation. Except the said provision no other

provision has been brought to my notice by any or the counsel. No doubt, learned counsel for the 2nd respondent has brought to my notice sub-

section (5) of Section 75 of the Act. As rightly contended by the learned counsel for the petitioner, the said provision relates to common cadre of

service of the Co-operative societies. It is also stated that so far common cadre of service has not been constituted by the Government. In such a

circumstance, the said provision is not applicable to our case. Learned Government Advocate has also stated that the petitioner is justified in

approaching the first respondent u/s 153 of the Act to ventilate his grievance. I am satisfied that the order of the second respondent dated 19-8-92

itself is an order under the by-laws of the 2nd respondent Union. Therefore, the revision petition u/s 153 of the Act before the first respondent is

maintainable. Even otherwise, as rightly contended by Mr. S. Ayyathurai, inasmuch as the seniority is the part of the service condition of the employees and the second respondent is obliged to prepare the list of seniority of employees call for objection and pass orders thereon, the action of the 2nd respondent with regard to the seniority or the employees may be construed as an action under the special by-laws of the Union. Therefore, I hold that the revision petition u/s 153 of the Act is maintainable. The contrary view taken by the first respondent is liable to be set aside.

7. Apart from this, as per sub-section (2) of section 153 of the Act, before passing any order under sub-section (1), a duty is cast on the revisional authority to afford an opportunity to the petitioner for making his representation. Such recourse has not been complied with before passing the impugned order. In other words, before rejecting the revision petition, the first respondent ought to have given an opportunity to the petitioner for making his representation even with regard to maintainability. Even on this ground the impugned order of the first respondent is liable to be quashed.

8. Under these circumstances, the impugned order of the first respondent dated 28.12.92 is quashed and the first respondent herein is directed to entertain the revision petition of the petitioner dated 16.9.1992 and dispose of the same on merits. In view of the claim of the petitioner that he has to be placed above one Rathinam, it is open to the petitioner to implead him as one of the respondents and even other-wise the first respondent is directed to issue notice to him before taking any decision in the revision. The first respondent is also directed to consider and dispose of the revision on merits as stated above after notice to the petitioner as well as one Rathinam within a period of six months from the date of receipt of a copy of this order. Writ Petition is allowed. No costs, consequently, W.M.P.No. 9321 of 93 is closed.